

North Smithfield Zoning Board of Review

Meeting Minutes of September 4, 2007

The North Smithfield Zoning Board of Review met on Tuesday, September 4, 2007, at 7:00 PM at Primrose Fire Station, 1470 Providence Pike, North Smithfield, RI 02896.

Call to Order: The Chair called the meeting to order at 7:05 pm.

I. Call of the Roll

Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, Steven Scarpelli, Guy Denizard, William Juhr, Dean Naylor, and Mario DiNunzio. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.

The Chair reviewed procedures of the board for all present.

II. Approval of Minutes and Ratification of Written Decisions

Mr. Marcantonio made a motion to approve the minutes of the July 10, 2007 meeting. Mr. Denizard seconded the motion, with all in favor.

Mr. Scarpelli made a motion to ratify the written decision on the application of Joseph and Jacquelyn Cardillo, requesting a dimensional variance from frontage requirements per section 5.5.1

Locus is 195 Sayles Hill Road, Plat 17 Lot 44. Mr. Marcantonio asked that Item E under Findings of Fact be stricken from the decision. Mr. Marcantonio and Mr. Juhr stated that they felt that the testimony of Erin Gallogly was sufficient for the needs of the application; that she provided information of value to the request of the applicant. Mr. Denizard stated that he agrees that requiring a licensed civil engineer to testify on behalf of the applicant makes the process more difficult for the applicant. The Chair stated that he thinks that in this case the information was required, but it does not mean that it is required in every case. Mr. Marcantonio made a motion to strike letter E from the Findings of Fact in the decision. Mr. Denizard seconded the motion. Zoning Board vote was as follows: AYE: Mr. Marcantonio, Mr. Denizard. NO: Mr. Juhr, Mr. Kearns, Mr. Scarpelli. Motion was denied 3-2. The Chair seconded Mr. Scarpelli's motion to ratify the written decision as submitted. All members voted AYE. Motion passed, with a vote of 5-0.

Mr. Denizard made a motion to ratify the written decision on the application of Susan Guerard requesting a reconsideration and modification to a decision and stipulation approved on September 6, 2005; also requesting a dimensional variance from frontage requirements per section 5.5, subsection 5.5.1 locus is 348 Iron Mine Hill Road, Plat 17, Lot 48. Mr. Scarpelli seconded the motion, with all members voting in favor. Motion passed 5-0.

III. Continued application of Daniel Geer and Debra McManus for

Omnipoint Communications, Inc., requesting to install a wireless communication facility (cell tower), which requires a Special Use Permit under Section 5.4.7, subsection 19(A) & 19(B), Section 5.6.3.10, subsection 6, and a dimensional variance under Section 5.6.3.10, subsection 7 (A-1). Locus is 260 Pound Hill Road, Plat 9, Lot 150.

Attorney Brian Grossman, radio frequency engineer Elijah Luutu, and site acquisition/selection representative Warren Kelleher were present for the applicant. The Chair stated that at the May 15, 2007 meeting, the Board had asked the applicant to look into alternate sites for cell tower placement on the property and in the area. Mr. Grossman stated that he had spoken with the owners to explore other sites on the property as potential alternatives. The owners have not made the sites available to Omnipoint, so they must consider them unavailable. Omnipoint has also spoken with RIDOT to see what sites could be potentially made available along Route 146.

Mr. Kelleher was sworn in by the court stenographer. He stated that he had discussed two sites with the property owner. These sites were a knoll in the middle of the parcel and an area closer to Route 146 (located on Lot 160). The knoll is unavailable because the owners have future plans for that area as a riding ring for their horse farm. The space on Lot 160 may be available, but the access to the site is difficult, due to significant wetlands, a pond, and an underground spring along the northwestern paddock. An access option was explored with DOT, coming through 146, but DOT will not grant

access easements from state highways to private parties. The area also has a very steep slope, which makes access difficult, even if an easement was granted. Mr. Kelleher stated that he searched for other sites, but the owners would not agree to make them available. He stated that DEM would probably not give approvals to disturb the wetlands on the location on Lot 160. In order to bring an access road in, significant disturbance will result. The originally proposed location is within the wetlands buffer, but not in the wetlands themselves. They will have to apply to DEM for approvals, but these approvals are more likely to be granted. The DOT approved two locations (at Route 146/Woonsocket Hill Road and Route 146/Pound Hill Road), but both locations would not provide the desired coverage to close the identified gap. Mr. Luutu checked out both locations from a radio frequency standpoint and the first is too far south; the second is too far north.

Mr. Naylor stated that he had been under the impression that the owners had already approved the site on the knoll. Mr. Kelleher replied that they had discussed it earlier, but the owners said no.

Mr. Jühr asked if Mr. Luutu had prepared a plot map showing coverage from the knoll. Mr. Grossman stated that they did not prepare this information because the owners have said that site is not available. Mr. Luutu stated that it would be the same coverage as the proposed site, but the knoll site is not available. Mr. Grossman stated that the applicant has spent a lot of time trying to find other locations,

but the owner is not making them available.

Attorney Aram Jarret addressed the Board for abutting property owner Richard Dowling. He asked the Board to deny the application. He stated that the owner is not suffering a hardship. Locating the tower so close to neighbors makes it convenient for the property owner, but causes hardship to the neighbors. He stated that the hardship may be caused to Omnipoint, but not to the property owner. Mr. Jarret stated that the owners are able to enjoy their property, which is a horse farm. He stated that a cell tower is not an accessory use to a horse farm and it is not compatible with the neighborhood. He stated that the variance should only be granted if there is no reasonable alternative, which he does not feel is applicable to this case.

Mr. Rossi asked if the owner of the property was present. They were not. The Chair stated that he agrees with Mr. Jarret that the owner should be present and that the owner is not being inconvenienced, however, there are issues in the application related to the Telecommunications Act. If the Board denies the application, it may be appealed.

Mr. DiNunzio asked if the applicant is Omnipoint or the property owners. He questioned whether the owners were pursuing all options with regard to location of the tower. Mr. Grossman stated that depending on the municipality, the applicant is sometimes the carrier,

other times it is the property owner. He stated that the reality of the application is that Omnipoint is an FCC-licensed carrier and they do have the benefit of the Telecommunications Act, which will recognize that Omnipoint has to build out its coverage. He stated that he shares the Board's frustrations; they have tried to find alternate locations, but they have not been able to do so.

Mr. Rossi stated that he agrees with Mr. Grossman that this is a complex legal issue, because the Board has to consider the Telecommunications Act, not just the Zoning Ordinance in making its decision. Mr. Rossi suggested that the Board delay making its decision to give him time to do the legal research necessary for him to properly advise them on their obligations.

Mr. Jühr stated that if they could find a location that did not require a variance, he would not have a problem with the application. Mr. Marcantonio stated that he has read the Telecommunications Act and it does not give the authority to place towers anywhere the carriers want.

The Chair made a motion to close the public hearing at 7:55 p.m. Mr. Denizard seconded the motion, with all in favor. The Chair stated that the Board will render its decision at the October 2, 2007 meeting; based on the information they receive from Mr. Rossi.

IV. Application of Creative Home Improvement Builders, Inc.,

requesting a dimensional variance for frontage requirements, per section 5.5, subsection 5.5.1. Locus is Black Plain Road, Plat 7, Lot 52.

Attorney Christopher Zangari was present for the applicant, Paul Larcher of Creative Home Improvement Builders, Inc. Mr. Zangari stated that his client is under contract to purchase the property from John and Helene Terrill. The purchase is contingent on the granting of the dimensional variance for frontage requirements.

Mr. Denizard stated that he had researched the property and found that in June 1973, the North Smithfield Planning Board had subdivided the property with the condition that a road be constructed. Mr. Rossi stated that he is also aware of the conditions placed on the subdivision of the property. Mr. Zangari responded that unlike the plan for the property in 1973, which was to construct many dwellings on the property, there would only be one dwelling built on the lot, which will eliminate the need for the road. Mr. Zangari stated that the zoning certificate that the applicant sought was denied by the Building Official due to the lack of 50' of frontage, not due to the lack of a road. Mr. Rossi responded that the Zoning Certificate is not binding on the Zoning Board of Review. He stated that the strip of land bordering Black Plain Road is listed as "proposed street" on the original plat and questioned whether an incipient dedication had occurred. Mr. Zangari stated that the strip of land in question is a shared driveway, not a road. Mr. Rossi stated that if it is on a

recorded plat, it is a paper road subject to future development. Mr. Rossi also stated that because Mr. Terrill also owns Lot 99, the two lots should be merged as a result of the Merger Ordinance (2 lots with continuous frontage on an unimproved street).

Mr. Zangari stated that the Planning Board's rationale for constructing a road was that there would be multiple homes on the subdivided land. These homes were never built, so the road is not needed. Only one home will be built on the lot. Mr. DiNunzio asked if the strip of land will remain the property of Mr. Terrill. Mr. Zangari stated that it will be sold to Creative Home Improvement Builders. The Chair asked if the strip is currently a deeded right of way. Mr. Zangari stated that the abutter currently has an easement to access his driveway. This easement will remain. Mr. Denizard asked if Lot 98 & Lot 99 will continue to have access through this strip of land. Mr. Zangari stated that the access for those two lots will remain as it is now. The driveway that exists will be extended for the new dwelling on Lot 52.

Mr. Denizard asked about the property in back of Lots 98 & 99 (two 23- ft. rectangular shaped parcels). He stated that they were added to the tax roll in 2006. According to Mr. Terrill, the owners of Lots 98 & 99 own the two pieces of land. The Chair gave a copy of the plat plan from 1973 to Mr. Zangari. Mr. Rossi stated that simply because lots appear on a subdivision doesn't mean the merger ordinance does not apply. He stated that in his opinion, two lots that abut each other with

contiguous frontage meet the standard to trigger the merger ordinance, therefore Lot 52 has merged with Lot 99 because they have been under the same ownership since 1976. Mr. Zangari stated that the merger ordinance does not apply to these lots.

Marc Nyberg was sworn in by the court stenographer. Mr. Nyberg is a Rhode Island licensed land surveyor. He stated that he had conducted two soil tests on the property. He found the lot has two sites on which a house could be located, according to DEM regulations. He stated that the land is suitable for an approved ISDS for one home. He stated that the access is a fairly steep driveway that would probably need some walls constructed about halfway down the 50-ft. right of way to make the driveway drivable. He estimated that approximately 300 yards of fill would be required to level off the driveway. He estimated the elevation from Black Plain Road to the end of the right of way to be about 20 ft. Mr. Nyberg said the proposed driveway would be constructed of crushed stone because a pervious surface would best handle runoff from the property. The Chair asked if Mr. Nyberg felt that the proposed driveway would accommodate emergency vehicles. Mr. Nyberg stated that emergency access would not be a problem and that the vehicles would have adequate room to turn around at the end if a hammerhead or cul de sac was constructed at the end. The Chair asked Mr. Nyberg if he had seen a deed or surveyed the land. Mr. Nyberg stated that what he had provided was strictly a preliminary plan based on the assessor's plat number. Mr. Zangari stated that the applicant

would get a survey completed and submitted.

Paul Larcher was sworn in by the court stenographer. Mr. Larcher is the owner of Creative Home Improvement Builders, Inc. He stated that the driveway drop-off is approximately 8 feet, and is not a steep driveway grade from the end of the existing driveway to the point where it begins to level off. The houses on both Lot 98 & Lot 99 have driveways leading to garages under the houses. These property owners are using the access to get to their driveways. The plan is just to extend what already exists. Mr. Larcher estimated that extending the access would require approximately 200 yards of fill. The Chair asked if Mr. Larcher knew what the pitch of the driveway would be after the improvements and whether it would meet emergency vehicle access requirements. Mr. Larcher stated that he did not have exact information regarding the grading, but he would get it. Mr. Zangari asked if the Board would accept plans that met the emergency requirements for a driveway instead of requirements for a road. The Chair recommended checking with the Planning Department for required standards.

Mr. Larcher submitted exhibit P1, a drawing of a road profile for the proposed driveway. The drawing showed plans for a 120-ft. driveway.

Mr. Larcher said that the length of the driveway made it not very steep.

Mr. Scarpelli asked about a dip in the driveway and asked if it would

be filled in and if it would have any effect on water runoff. Mr. Larcher stated that it would not be filled in because that would cause runoff. Instead the driveway would be constructed of crushed stone with a retention drain at the end of the driveway. He stated that the proposed driveway does not have a continuous slope; it levels off in areas. Mr. Larcher stated that the construction of the driveway will not result in any drainage issues.

Mr. Juhr asked how wide the driveway would be and whether they would agree to a stipulation that only one home be built on the property. Mr. Larcher stated the driveway would be 12 feet wide, the same as the existing driveway. Mr. Juhr also asked if they would be willing to put in a road with a cul de sac. Mr. Larcher stated that the issue is that standards for road construction are very strict with regard to standard degree of pitch. To meet town road requirements, they would have to extensively fill in the property. The driveway requirements would be much easier to meet.

Mr. Zangari submitted exhibits P2 (Application for Certificate of Zoning Compliance), P3 (Letter of Denial from Building Official), and P4 (Memorandum in Support of the Applicant's Request for Relief from Frontage Requirements and Findings of Fact).

Mr. Scarpelli asked who would be responsible for the maintenance of the right of way. Mr. Zangari stated that the owner of Lot 52 would be responsible for the maintenance, with the owners of Lots 98 & 99

getting access easements. The Chair asked what the rights of the owners of Lots 98 & 99 would be if the owner of Lot 52 abandoned the property. Mr. Zangari said that situation would result in a civil cause of action between the property owners.

Mr. Zangari stated that if the variance is denied, it would be more than a mere inconvenience for the applicant, because the Board would essentially take away the use of the property. He stated that if a house cannot be constructed on the property, then the property cannot be used for any other purpose. It is in a residential zone. He stated that as an alternative to putting in a road and building many houses, the applicant will fix the driveway and build only one house. Mr. Zangari stated that the property will have only one house forever. Mr. Zangari stated that the intent of the 1973 Planning Board stipulation can be inferred because they were discussing a subdivision with many houses.

The Chair stated that he would like the Board to have a chance to review the materials submitted at this meeting, including the law memo. He also stated that there is a question about whether this property falls under the merger ordinance. He asked Mr. Rossi to give an opinion.

Mr. Rossi stated that Mr. Terrill testified that he owns Lot 52 & Lot 99. Mr. Rossi stated that these two lots abut each other and are contiguous along Black Plain Road. Mr. Rossi stated that there is a

question about who owns the strip of land, but either way the requirements of the merger ordinance are met and have been triggered. Mr. Zangari questioned whether the merger ordinance applies in this case because the lots were purchased before the merger ordinance was written. Mr. Rossi stated that it applies because of the single ownership. Mr. Zangari asked if Lot 52 is a single lot of record. Mr. Rossi stated that it is, but that zoning has changed. Mr. Zangari asked the Board for the opportunity to submit a written memorandum as to why the merger ordinance does not apply and add it to the record. The Chair agreed to this.

Andrew Weeks, an abutter to the property was sworn in by the stenographer. He stated that he has lived in the neighborhood since 1980 and would much rather see the property have one house than five, and he would rather have a driveway constructed than a road.

Paul Decelles, an abutter to the property was sworn in by the court stenographer. He stated that he is concerned with the water that collects on Lot 52 and possible drainage issues to the neighborhood. He also stated that the wildlife in the area should be protected. He also stated that the placement of the house on the property is a concern.

Mr. Larcher responded that to conform to state law requirements, a house must be 150 feet way from the wetlands. He stated that the proposed house is 300-400 feet from the wetlands. He also stated

that the drainage would not affect Mr. Decelles' property because they would not alter the land in any way to pitch toward a neighbor's property.

Scott McGee was sworn in by the court stenographer. He is the listing agent for the property. Mr. McGee stated that he had spoken with the Town Planner Michael Phillips regarding the proposed road and was told that a road with a cul de sac was required for 3-4 house subdivisions, otherwise a driveway with a turnaround would fulfill emergency access requirements. Mr. Juhr asked if he had anything in writing from the Mr. Phillips, but Mr. McGee did not. Mr. Juhr asked if they should seek a recommendation on this issue from the Planning Board. Mr. Rossi stated that he does not believe they would have jurisdiction, except for the area of the proposed street.

Mr. Denizard asked to see plans that address wetlands issues. Mr. Larcher stated that they have not gone that far yet in the planning. Mr. Zangari stated that they will have a wetlands biologist walk the property and flag it. They will show this on the site plan and they will meet all state DEM regulations.

Mark Smith, attorney representing Leo Houle, the owner of Lot 98, addressed the Board. Mr. Houle was sworn in by the court stenographer. Mr. Houle stated that he bought the house in 1973 and paved the driveway around 1976. He stated that he shared the cost of driveway constructing with Mr. Terrill. Currently Mr. Houle maintains

the shared driveway. He has put in a drainage system, including running a pipe out into the woods. He has cut trees down and loamed and seeded part of the land designated as proposed street and further into Lot 52. His maintenance has included plowing and sanding the paved portion, loamed, seeded, fertilized, and cut grass on the non-asphalt portion for over 20 years. Mr. Houle stated that over the years he has encroached on Lot 52 to install a basketball court and a horseshoe pit and used part of that land as a backyard. He added that no one ever told him not to use this land. The Chair asked him if he was aware of the encroachment. Mr. Houle stated that he was, but assumed it was OK because Mr. Terrill never said anything. Mr. Rossi asked Mr. Houle if the area denoted as proposed street was tarred. Mr. Houle stated that he had paved it approximately 20 years ago. Mr. Rossi asked Mr. Houle if anyone paid taxes on the strip of land. Mr. Houle said no, that he assumed it was a town road. Mr. Houle also pointed out on the plans the part of the land that he had paved and the part of Lot 52 that he uses as a backyard. Mr. Smith submitted exhibit R1, a plat plan that depicts the "proposed street." Mr. Smith also stated that he agrees with Mr. Rossi, that the merger ordinance does apply to Lots 52 & 99. Mr. Smith also objected to exhibit P4 (Findings of Fact). Mr. Rossi stated that the Board has accepted it as testimony, not as a finding of fact. Mr. Juhr asked if Mr. Smith could get a copy of P4.

Mr. Scarpelli made a motion to continue the hearing to October 2, 2007. Mr. Denizard seconded the motion, with all in favor. Mr.

Marcantonio asked if the applicant should go to the Planning Board since the lots have been merged. Mr. Rossi told the Board to consider Mr. Zangari's written memorandum (to be submitted) before deciding.

The Chair called for a recess at 9:15 p.m. He called the meeting back to order at 9:20 p.m.

V. Application of Glenn & Marjorie Andreoni, requesting to expand and enlarge onto this "pre-existing non-conforming" residential structure. This will require the granting of a Special Use Permit, under section 4, subsection 4.1(D) of the zoning ordinance. Locus is Cranberry Lane, Plat 16, Lot 81.

Attorney John Shekarchi was present for the applicants. The applicants are requesting a special use permit to expand a home on a large 52-acre lot. The applicant, Glenn Andreoni, addressed the Board to explain that the lot currently has 2 homes; his in-laws live in one of the homes, the other one needs major rehabilitation. He would like to expand this home for his mother. He submitted the plans for the renovation of the existing house. He would like to convert the existing home into a 2-car garage and add an attached single-family dwelling. Part of the expansion and renovation includes plans for removing the cesspool and installing a bottomless sand filter septic system.

The following exhibits were submitted in support of the application:

A1) DEM Certificate of Conformance for ISDS

A2) Town of North Smithfield Certificate of Zoning Compliance

A3) Site Plan for Plat 16, Lot 81

A4) Resume of Edward Pimental, AICP

A5) Single-Family Residential Expansion Proposal prepared by Edward Pimental

A6) Resume of Scott Rabideau of Natural Resource Services, Inc.

A7) Aerial photograph of AP16, Lot 18, with wetlands marked

A8) Letter from North Smithfield Fire Marshal Brian Gartland

A9) DEM Site Evaluation Form, Soil Profile Description

A10) DEM ISDS Inspection Report

A11) DEM ISDS Application

A12) Drawing with description of ISDS

Mr. Shekarchi stated that the Planning Board had given a positive recommendation on the applicants' request, with the stipulation that evidence that the other home on the lot (not the one that will be renovated and expanded) has a legal, conforming ISDS. He submitted documents to provide this evidence.

Mr. Shekarchi submitted the resume of Edward Pimental and asked the Board to accept him as an expert witness. The Chair accepted Mr. Pimental's qualifications. Mr. Pimental was sworn in by the court stenographer and gave a summary of his report (exhibit A5) and his conclusions. He stated that by granting the applicants' request, the

Board will be in keeping with the town's Comprehensive Plan. The septic systems will be improved, therefore, the applicant will be improving the lot.

The Chair asked Mr. Andreoni if he would be willing to accept a condition to approval that this will be the extent to building on this lot. Mr. Andreoni stated that he has no other plans for this lot, other than what he has submitted tonight. He is willing to put a long-term restriction (25 years) on the development of the property. The Chair asked if there was any possibility of future development of this parcel. Mr. Andreoni stated that the previous owners had proposed a 21-house subdivision, with additional roads. The abutting property owners were all strongly opposed to this plan. Mr. Andreoni bought the property to prevent development. In any case, he stated, due to wetlands issues, he does not think the property is suitable for a multi-home subdivision development.

Scott Rabideau was sworn in by the court stenographer. He submitted his resume and gave a summary of his qualifications. The Board accepted Mr. Rabideau as an expert witness. Mr. Rabideau addressed the wetlands on the property and stated that a DEM application has been submitted. He stated that it is a straightforward application and he is expecting the permit in approximately 30 days. He stated that there will be no impact on the groundwater supply in the area and no interference with the natural characteristics of the land.

Mr. Denizard made a motion to extend the meeting beyond 10:00 p.m. Mr. Scarpelli seconded the motion, with all in favor.

Paul Gadoury, an engineer with Marc Nyberg Associates, was sworn in by the court stenographer. He testified that the paved driveway is in very good condition, with sight distances that exceed requirements. He stated that there is no flooding potential on the site and emergency access is sufficient. Ingress and egress is adequate, with a good turning radius. Marc Nyberg testified to the soil analysis and proposed ISDS. He explained how a bottomless sand filter system works. He stated that the ISDS will be state of the art, with water being 85% pure after filtering through the ISDS. Mr. Denizard asked about the functioning of the system in case of emergency. Mr. Nyberg stated that the system is forced main, with 2 pumps and a 1500-gallon tank. The system is equipped with emergency alarms.

The following residents, all abutters to the property were sworn in by the court stenographer and spoke in favor of the applicants' request: Brad Dean, Scott Sutherland, Brian Corriveau, Carl Rouette, W. Robert Freiburger, and Gerald Riendeau. The public hearing was closed at 10:20 pm.

Mr. Marcantonio made a motion to approve the applicants' request for a Special Use Permit, under section 4, subsection 4.1(D) of the zoning ordinance, for the lot on Cranberry Lane, Plat 16, Lot 81, with the

stipulation that the residence is expanded and renovated in every aspect, according to the testimony and exhibits presented at this meeting. Mr. Denizard seconded the motion. Zoning Board vote was as follows: AYE: Mr. Marcantonio, Mr. Juhr, Mr. Denizard, Mr. Kearns, and Mr. Scarpelli. Motion passed with a vote of 5-0. Special Use Permit was granted.

Mr. Scarpelli made a motion to adjourn at 10:27 p.m., seconded by Mr. Kearns, with all in favor.

**Respectfully submitted,
Angela Pugliese, Clerk**